IN THE HIGH COURT OF JUDICATURE AT BILASPUR
CHHATTISGARH

Division Bench

Misc. Appeal No. 1097 of 2003

Appellants: Non applicants
1. State of Chhattisgarh, through the Collector Ambikapur District Surguja(CG)

Non applicant
2. Superintending Engineer, through Assistant Engineer, Public Health Engineering Department, Irrigation Colony, Ambikapur-Surguja (CG)

Versus

Respondents: Claimants
R 1. Jainandan, S/o Charku Ram, aged about 40 years, By Caste Rajwar, occupation Agriculturist and Labour

R 2. Smt. Leelawati, W/o Jainandan, aged about 30 years, By Caste Rajwar, occupation house-wife and labour.
Both R/o Vill- GORTA, Thana-LAKHANPUR TAH- AMBIKAPUR, Distt. SARGUJA (CG)

Non-applicant No.3 R Ram Manohar Pandey, S/o Shri Ramnaresh Pandey, aged about 57 years, occupation Driver, Public Health Engineering Department, Sub Division, Kedarpur, Ambikapur-Surguja (CG)

MEMO OF APPEAL UNDER SECTION 173 OF THE MOTOR VEHICLES ACT 1988

(83)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Miscellaneous Appeal No.1087 of 2003

State of Chhattisgarh and another

- Versus -

Jainandan and others

ORDER FOR CONSIDERATION

Sd/-
L.C. Bhadoo
Judge

HON'BLE THE CHIEF JUSTICE

Sd/-
Chief Justice

POST FOR ORDER ON 24TH JUNE, 2004

Sd/-
L.C. Bhadoo
Judge

(34)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Miscellaneous Appeal No.1087 of 2003

State of Chhattisgarh and another

- Versus -

Jainandan and others

Present: -

Mr. U.N.S. Deo, Govt. Advocate: For the State/appellants.

Division Bench: -

Hon'ble Mr. A.S.V. Moorthy, C.J.

and Hon'ble Mr. L.C. Bhadoo, J.

ORDER

(Passed on 24th June, 2004)

The following order of the Court was delivered by *L.C. Bhadoo, J*: -

1. Appellants 1 and 2 State of Chhattisgarh and Superintending Engineer, Public Health Engineering Department, respectively, have preferred this appeal under Section 173 (1) of the Motor Vehicles Act, 1988, being aggrieved by the award dated 21.8.2003, passed by the Motor Accident Claims Tribunal, Surguja (Ambikapur), whereby the learned Tribunal has partially allowed the claim of respondents 1 & 2 herein who are the father and mother of deceased Satyanarayan to the extent of Rs.1,42,000/- assessing their dependency to the tune of Rs.9,000/- per annum by applying the multiplier of 15 including Rs.5,000/- as compensation on account of deprivation of the pleasure of their son and mental agony and also Rs.2,000/- for funeral expenses.

2. Facts in brief leading to filing of this appeal are that on 30th March, 2002, at about 16:30 hours when deceased Satyaranayan along with Jagmohan and Rajesh Kumar were coming to their village on a bicycle from Village: Lehpatra, deceased Satyanarayan was sitting in the front on the frame of the bicycle, when they reached near a petrol pump of Village: Kewri, one truck bearing registration No.MPZ-8430, came from the opposite direction i.e. Lakhanpur

village side. It is alleged that respondent No.3 Ram Manohar Pandey while driving the truck in a rash and negligent manner, hit the cycle from the front side, as a result of which all the three boys along with the cycle fell down and Satyanarayan received multiple injuries as many as ten injuries viz., multiple bone fractures on parietal region, mandible and chest; liver was ruptured, brain was lacerated and on account of these injuries, he died spontaneously. Rajesh, who was travelling with the deceased on the bicycle as pillion rider, lodged the report in Police Station: Lakhanpur on the same day. The Police took up the investigation and ultimately, after investigation filed charge sheet against respondent No.3 for the commission of offence punishable under Sections 279, 337 and 304-A of the I.P.C.

3. Based on the above facts, respondents 1 & 2 herein filed claim under Section 166 of the Motor Vehicles Act, 1988, before the Accident Claims Tribunal, Surguja, mentioning therein that the deceased was 21 years old, he was earning Rs.5,400/- per month and they were dependant upon the deceased and on account of the death of Satyanarayan they have been deprived of the pleasure of their son and also from financial help. They claimed compensation to the tune of Rs.13 lakhs. The defence of the appellants and respondent No.3 herein before the Tribunal was that the truck in question had not hit the cycle in question as alleged as the same was standing in the office compound being a Holi holiday, at the headquarters. However, the learned Tribunal disbelieving and rejecting the defence of the appellants and respondent No.3 herein, allowed the claim of respondents 1 & 2 herein partially as indicated in the previous part of this order.

4. We have heard Mr. U.N.S. Deo, Govt. Advocate on behalf of the State/appellants on the question of admission.

5. Mr. U.N.S. Deo, argued that the impugned award of the Tribunal is perverse as the evidence adduced by the appellants has not been properly appreciated and the Tribunal has wrongly disbelieved the evidence of the appellants as well as the entries made in the log book of the relevant truck as the log book was being regularly maintained and entries were being made regularly as official act,

therefore, in view of the provisions of Section 114 (e) of the Evidence Act, the learned Tribunal ought to have drawn inference that the entries in the logbook were correct. He further argued that the evidence of the claimants was not worth believable as Rajesh while making report before Police Station: Lakhanpur vide Ex.P-4 mentioned that the truck which hit the cycle was of 407 model and of green colour, whereas the truck bearing registration No.MPZ-8430 is of yellow colour and the make of the truck is 1210. Therefore, in view of the weak evidence of the claimants and looking to the official logbook and the evidence of the appellants, the learned Tribunal ought to have rejected the claim.

6. Having heard the learned counsel for the appellants, we have perused the evidence on record and relevant documents and the concerned logbook. After perusing and considering the evidence, we are of the considered opinion that the learned Tribunal has rightly rejected the defence of the appellants and rightly held that the truck in question MPZ-8430 was the truck, which hit the cycle, in question.

7. PW-2 Rajesh Kumar who was travelling along with the deceased on the cycle has categorically stated that at the time of the accident he was travelling with the deceased on the cycle, after the accident he immediately gave water to Satyanarayan and thereafter, he lodged the report Ex.P-4 before the Police Station. In the cross examination, this witness has stated that the colour of the truck which has been mentioned as green in the report Ex.P-4 is not correct, the truck which caused the accident was of yellow colour. He has further stated that Satyanarayan was sitting in the front side of the cycle on the frame, whereas, he was travelling as pillion rider on the bicycle. In this connection, the evidence of PW-4 Banshidhar Yadav is also very important as he investigated crime No.45/2004 and ultimately filed charge sheet against respondent No.3 for causing the accident while driving the truck bearing registration No.MPZ-8430 and thereby causing the death of Satyanarayan. On a question by the Tribunal, he has categorically stated that during the course of investigation, one person Anand Ram disclosed him that he was travelling in the truck in question at

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the time of the accident and he had also disclosed him that the truck in question caused the accident. The evidence of PW-2 Rajesh Kumar and PW-4 Banshidhar Yadav further stand supported and corroborated by the evidence of PW-3 Chamroo Singh, Sarpanch of Village: Narkalo, who has stated that on 30.3.2002 hand pump boring was done by the truck in question i.e. MPZ-8430 in his village and in token thereof he issued certificate Ex.P-5.

8. As far as mentioning the green colour in the report Ex.P-4 by PW-2 Rajesh is concerned, as the accident took place all of a sudden and on account of the accident it is but natural that one can become nervous and perturbed and can also commit mistake regarding mentioning the colour while giving report. Particularly this contradiction is not of that much relevance looking to the other evidence on the record i.e. the evidence of Investigating Officer Banshidhar Yadav (PW-4) and the evidence of Chamroo Singh, Sarpanch (PW-3). As far as the evidence of PW-3 is concerned, it is true that Ex.D-1 certificate was issued by Chamroo Singh (PW-3) regarding the installation of hand pump and this certificate was issued on 28.3.2002. He has also issued certificate Ex.P-5 saying that the truck in question came to his village for installation of hand pump. In his cross-examination, he has categorically stated that Ex.P-5, the certificate, was issued by him on 30th March, 2002, at 5 p.m.

9. We have seen the cross-examination of this witness and in the cross-examination, the appellants were not able to destroy his evidence that the truck in question came to Village: Narkalo on 30.03.2002. Now, in the light of the above evidence adduced by the claimants, if we look into the defence of the appellants herein that the truck in question was standing at the headquarters on the relevant day being a Holi holiday, the log book of the truck which is being regularly maintained in the official performance of the duty indicates the same. The learned Tribunal has rejected the defence of the appellants on the ground that 29th March, 2003, being Holi that was holiday and 30th March, 2003, was not a Holi holiday, therefore, the defence of the appellants that being a Holi holiday the truck in question was standing in the office compound was

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disbelieved. The learned Tribunal further observed that all the entries in the logbook of the relevant date were made in order to create false defence. The relevant logbook has been shown to be closed on 31st March,. 2002. The learned Tribunal further observed that the maintenance of the logbook has no relevance with the closing of the financial year. The logbook is being used till the end of the last page. We have also perused the logbook, which reveals that in the 9th column, the officer-in-charge is required to verify the entries made by the driver regarding the use of the truck. It is surprising that right from the beginning till 24th March, 2002, no entries made by the driver were verified by the officer-in-charge under whose supervision the truck was operating. However, from 25th March, 2002, till 31st March, 2002, all the entries made by the truck driver regarding the use of truck were verified by the officer-in-charge. This fact itself shows that all these entries were made and verified by the senior officer-in-charge in order to create the defence. Even otherwise, the defence taken by the appellants herein that being a holiday, the truck was standing in the office compound was self-contradictory. In the first place, they have stated that the truck was standing in the office compound being a holiday, but on the other side it has been entered in the logbook that the truck was used about 30 kms. in the city run for POL and radiator repairing etc. on 30.3.2002.

10. Presumption under Section 114 (e) of the Evidence Act is rebutable and in view of the above evidence adduced by the claimants and the finding of the Tribunal, we are of the considered opinion that the Tribunal has rightly rejected the defence of the appellants disbelieving the entries of the logbook, as these entries are not worth reliance. In view of the reasons mentioned above and also looking to the evidence of PW-2, PW-3 & PW-4 and particularly, the investigating officer (PW-4) whose evidence the appellants have not been able to destroy in his cross-examination, we do not find any ground to disturb the findings recorded by the Tribunal and we cannot take a different view, which has been taken by the Tribunal. Even though, in the appeal a ground has been taken that the Tribunal was not right in awarding the claim amount of Rs.1,42,000/- to respondents 1 & 2, but during the course of the

arguments, learned Govt. Advocate could not make out a point that how the finding of the Tribunal regarding this compensation is not correct. The learned Tribunal has assessed only Rs.9,000/- per annum towards the dependency of parents. At the time of the accident, father of the deceased i.e. respondent No.1 was 40 years of age, therefore, the multiplier of 15 has rightly been applied by the Tribunal. Therefore, in any way, the compensation awarded by the Tribunal is not excessive.

11. In the circumstances, we do not find any substance in this appeal. The same fails and is liable to be dismissed. Therefore, it is hereby dismissed at the admission stage itself.

Sd/-
Chief Justice

Sd/-
L.C. Bhadoo
Judge

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